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IN THE

Supreme Court of the United States

October Term, 1952.

No. 492.

ONE 1951 FC .D PICK-UP 3/4 TON TRUCK, ENGINE NO. PRICE 12606; HAMMONTON INVESTMENT AND MORTGAGE CO.,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1952.

No. .

ONE 1951 FORD PICK-UP ¾ TON TRUCK, ENGINE NO. F2RICS 13966; HAMMONTON INVESTMENT AND MORTGAGE CO.,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

Your Petitioner prays that a Writ of Certiorari be issued to review the final judgment of the United States Court of Appeals for the 3rd Circuit.

OPINION BELOW.

The opinion of the Court below was issued on October 27, 1952. It is not yet reported.

JURISDICTION.

Judgment was entered in the present case on October 27, 1952. This Petition is presented within ninety (90) days from the date of entry of judgment.

Jurisdiction is invoked under Section 1254 of the Judicial Code, 28 USC Section 1254.

STATUTE INVOLVED.

"In any such proceeding the court shall not allow the claim of any claimant for remission or mitigation unless and until he proves (1) that he has an interest in such vehicle or aircraft, as owner or otherwise, which he acquired in good faith, (2) that he had at no time any knowledge or reason to believe that it was being or would be used in the violation of laws of the United States or of any State relating to liquor, and (3) if it appears that the interest asserted by the claimant arises out of or is in any way subject to any contract or agreement under which any person having a record or reputation for violating laws of the United States or of any State relating to liquor has a right with respect to such vehicle or aircraft, that, before such claimant acquired his interest, or such other person acquired his right under such contract or agreement, whichever occurred later, the claimant, his officer or agent, was informed in answer to his inquiry, at the headquarters of the sheriff, chief of police, principal Federal internal-revenue officer engaged in the enforcement of the liquor laws, or other principal local or Federal law-enforcement officer of the locality in which such other person acquired his right under such contract or agreement, of the locality in which such other person then resided, and of each locality in which the claimant has made any other inquiry as to the character or financial standing of such other person, that such other person had no such record or reputation." 62 Stat. 840; 18 U. S. C. Sec. 3616.

QUESTIONS PRESENTED.

1. Where an automobile finance company, in good faith and for value, takes an assignment of a conditional sales contract secured by a truck after investigating the purchaser, and where in fact the purchaser has no record nor reputation for violation of liquor laws, should the truck be forfeited when it is used by the purchaser's husband in connection with an illegal still where the husband of the purchaser has a record of liquor law violations?

2. Did the Court below properly hold that the husband of the purchaser of a truck under a conditional sales contract, which contract has been assigned for value to a finance company, had a "right" under that contract within the meaning of the remission of forfeiture statute, 62 Stat. 840, where the husband supplied the down payment for the purchase unknown to the finance company?

3. Should the forfeiture be upheld where no original inquiry was made, but where the evidence reveals that had the finance company, innocently taking a conditional sales contract secured by a truck, investigated the record or reputation of the husband of the purchaser by inquiring of the local police chief as to such record or reputation, it would have received a satisfactory answer?

4. Did the Court below err in denying the petition for remission of forfeiture?

STATEMENT OF THE CASE.

Petitioner is a finance company located in Hammontown, New Jersey. It deals in the purchase of conditional sales contracts secured by motor vehicles. In March of 1951, a salesman employed by the Hy-Way Motor Service of Egg Harbor, New Jersey, was informed by a local garage man that one Thomas J. Marks desired to purchase a three-quarter ton Ford pick-up truck. After a meeting, Marks gave the salesman a deposit. When the truck arrived, approximately a week later, Marks informed the salesman that he wished to have the truck financed and told the salesman that his wife, Thelma V. Marks, would take title and sign the finance papers. Thomas J. Marks gave Hy-Way Motor Service six hundred seventeen ($617) dollars as a down payment. Purchaser and her husband accepted delivery.

Meanwhile, petitioner, Hammonton Investment and Mortgage Co., upon receipt of the application of Thelma V. Marks from the automobile agency, had its investigator call at the Marks' home and also examined credit references. Mrs. Marks' business was listed as hauling. Thelma V. Marks also received an income of two hundred dollars a month from her husband. The investigator found the Marks had lived in the same vicinity for a number of years and had "never been in any serious trouble." No inquiry was made of any chief of police or of the Alcohol Tax Unit with respect either to the purchaser or her husband at the time of the assignment to petitioner. The evidence does not show that petitioner knew that the husband had ordered the truck or had made the down payment.

On June 21, 1951, the truck was seized by the Alcohol Tax Unit and Thomas J. Marks arrested in connection with the operation of an illegal still.

It appeared that Thomas J. Marks had a record for violating Federal liquor laws and had three convictions between 1939 and 1945. Thelma V. Marks, his wife, the purchaser of the truck, had no record nor reputation for violating liquor laws.

The salesman who sold the truck, upon learning of its seizure and the arrest of Marks, called the chief of police of Absecon and from his conversation with the police chief learned that the latter knew nothing detrimental about Thomas J. Marks or his wife, Thelma V. Marks, even at that later date.

The respondent filed a libel of seizure and forfeiture of the contract on July 9, 1951 and on July 20, 1951, petitioner filed its claim and answer. On September 24, 1951, petitioner filed a petition for remission of the forfeiture and a bond for release of the truck.

The District Court refused the remission and the Court of Appeals affirmed on the ground that petitioner knew Thomas J. Marks was the real purchaser and that petitioner was bound to make inquiry as to his record or reputation prior to entering the finance transaction in order to obtain remission of the forfeiture.

REASONS FOR GRANTING THE WRIT OF CERTIORARI.

1. The decision below is in conflict of that of the Fifth Circuit in the case of *U. S. v. One 1938 Model Chevrolet Coach,* 106 F. (2d) 985 (C. C. A. 5, 1939).

In that case, the automobile dealer sold O'Kelley a car, taking in part payment a used automobile which he said belonged to him, but in fact was owned by Gee, who accompanied O'Kelley during the purchase transaction. O'Kelley sought to finance the balance due on the car and the dealer, upon learning that O'Kelley's credit was poor, requested Gee to act as endorser. He did so. In fact the purchase was for Gee, O'Kelley merely acting as a "straw man" in the transaction. The dealer investigated O'Kelley, including his record and reputation as a liquor law violator. Gee, the endorser was not investigated; however, Gee did have a record of liquor law violations. The car was seized while Gee was engaged in violating liquor laws.

The dealer sought remission of the forfeiture. The Government contended that the dealer should have investigated Gee's record and reputation for liquor law violations. The District Court granted the remission and the Circuit Court affirmed, holding that the dealer had no duty to investigate Gee.

In the instant case, the finance company, petitioner, had no direct dealings with Thomas J. Marks or Thelma V. Marks. The only knowledge it had was that Thelma V. Marks was purchasing the truck, that she was in the hauling business and also as a housewife derived $200.00 per month from her husband. The investigation petitioner made of Thelma V. Marks gave no hint of a liquor law violation record and in fact Thelma V. Marks had none. Moreover, as the evidence in this case demonstrates, had the petitioner asked the chief of police about Thomas J. Marks' reputation or record, he would have received a clean bill of health. The petitioner, on the evidence, had no knowledge of the previous dealings between Mr. Marks and the automobile agency. *The statement of the Court below that petitioner had such knowledge is not supported by the record.*

Thus, in the case in the Fifth Circuit where the apparent purchaser was a "straw man" and where the real purchaser was personally known to the automobile dealer and endorsed the finance papers, the Court held that there was no duty to investigate beyond the record of the person taking title to the car. In the instant case, the Court put a much greater duty of vigilance upon the finance company, saddling it with responsibility not only for the purchaser and title holder, but also for her husband, even though it had no knowledge whatsoever of his activities, nor reason to believe he was not law-abiding.

2. The decision below is in conflict with that of this court in *U. S. v. One Ford Coach,* 307 U. S. 219 (1939). In

that case an automobile dealer sold a car to Walker, who traded in, in part payment, a car owned by his wife but paid for by him. The conditional sales contract evidencing the balance was drawn in the name of his brother and title was taken also in the name of his brother. In fact, the brother had no interest in the transaction. Walker was living in his brother's house. The finance company, before accepting the conditional sales contract, investigated the brother and found that he had no record nor reputation for violating liquor laws. Walker, however, did have such a reputation but no investigation was made of him. The government contended that the finance company should have investigated Walker as well as the brother. This Court held that the finance company, which purchased the conditional sales contract in good faith, need not look for the real party in interest at its peril. This Court said (at page 222):

> "But in our view Congress did not intend to impose upon the lienor the obligation to ascertain at his peril the identity of every person having an interest in the property and to make inquiry of the law enforcement officers as to the previous record and reputation of every such person, *unless from the documents themselves or other surrounding circumstances the lienor possesses information which would lead a reasonably prudent and law-abiding person to make a further investigation.*" (Italics supplied.)

The facts which were available to the petitioner in the instant case at no time indicated to petitioner circumstances which would lead it, as a "reasonably prudent law-abiding person" to make further investigation of the husband.

3. The decision below erroneously interprets a Federal statute which is important in the administration of the Revenue Laws of the United States, and has wide impact on com-

mercial transactions made in good faith and value.[1] The statute heretofore quoted makes three requirements: (1) that the claimant for remission have an interest in the vehicle acquired in good faith; (2) that the claimant had no knowledge or reason to believe that it would be used in violation of the liquor laws of the United States or any State. These two requirements have been fully met by petitioner; (3) the third requirement is that if the interest asserted by the claimant arises out of or is in any way subject to any contract under which any person having a record or reputation for violating liquor laws "has a right with respect to such vehicle" . . . "that, before such claimant acquired his interest, or such other person acquired his right under such contract" certain inquiries must be made of law enforcement officers as set forth in this statute. The problem in the instant case arises out of the proper interpretation of the word "right" as used in the statute. It must be borne in mind that the statute is one requiring a forfeiture of the property of innocent persons like the petitioner herein, who have had no dealings directly with the purchaser of the vehicle but rely only on application forms and credit investigations. It should also be pointed out that almost half of the purchases of new motor vehicles are financed by organizations like that of petitioner. The word "right", as used in the statute, should be viewed as synonymous with the legal ownership of the vehicle. Such is the teaching of *U. S. v. One Ford Coach, supra.* Clearly, to paraphrase the words of that case, neither the documents themselves nor the surrounding circumstances indicated to petitioner that it, as a prudent law-abiding organization, need make a further investigation. In *U. S. v. One Stude-*

1. According to the census of Manufacturers made in 1947 by the Bureau of the Census, the motor vehicle manufacturing industry is the largest manufacturing industry in the United States. The Federal Reserve Board has stated in its publications that in 1951 47 percent of all new automobiles sold were financed.

baker Coupe, 39 F. Supp. 250 (D. C. Va. 1941), where a son-in-law, who had a reputation for violating liquor laws, together with his mother-in-law, jointly executed a note to the bank, but title was taken in the name of the mother-in-law, the Court held in remitting the forfeiture that only the mother-in-law had a "right" with respect to the motor vehicle since ownership was in her name. The holding there was that the word "right" means legal right. *Cf. C. I. T. Corporation v. U. S.,* 89 F. (2d) 977 (C. C. A. 4, 1937).

In the instant case, only Thelma V. Marks had an ownership recognized under the laws of the State of New Jersey. There was nothing in the documents or circumstances known to petitioner, it is submitted, to indicate to petitioner that her husband had any interest whatsoever in the truck. Under the decisions of New Jersey, as in many States, where property is purchased with the husband's money, but taken in the wife's name, a gift of such property to the wife is, in the absence of extraordinary circumstances, presumed by the courts. *Strong v. Strong,* 134 N. J. Eq. 513, *aff'd.* 136 N. J. Eq. 103 (1945). Certainly the word "right" as used in the statute must obtain its content from the laws of a particular state in which the transaction occurs, which laws define the extent of ownership and claims of property. The law in New Jersey, as in many States, gives the full bundle of rights constituting ownership of the vehicle to the wife, Thelma V. Marks. Since she had no record nor reputation for violation of liquor laws, the Court below improperly affirmed the judgment of the District Court which held that the remission should not be granted.

4. The Court below erroneously affirmed the action of the District Court in exercising its discretion by refusing the remission of forfeiture. The evidence demonstrated that had petitioner inquired of the local police chief as to the record or reputation of Thomas J. Marks for violation of liquor laws prior to its entering the conditional sales transaction, it would have received a satisfactory answer. It is submitted that upon these facts, the District Court went

beyond the allowable limits of its discretion in refusing the remission and that the Court below improperly affirmed the District Court's judgment. Generally, the law does not require a person to perform a useless act. In the present case, it appears that whatever Thomas J. Marks' record or reputation was, it was not known to the local police chief, either before the transaction was made or even at the time of Marks' arrest. Therefore, had petitioner gone through the form set forth in the statute, it would have learned nothing detrimental. The view here urged has judicial support. In *U. S. v. One 1935 Chevrolet,* 37 F. Supp. 877 (D. C. Ky. 1941), the Court held it would not forfeit the interest of a lienor who had acquired his interest in good faith merely because he failed to make inquiry of a certain officer and thus to receive a negative answer from that officer, where if he had actually made such inquiry he would have received the same negative answer.

CONCLUSION.

WHEREFORE, it is submitted that this Court should grant a Writ of Certiorari to the Court of Appeals for the Third Circuit, and that the judgment of the Court below be reversed.

Respectfully submitted,

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In the Supreme Court of the United States

OCTOBER TERM, 1952

No. 492

ONE 1951 FORD PICK-UP ¾ TON TRUCK, ENGINE NO. F2RICS 13966; HAMMONTON INVESTMENT AND MORTGAGE CO., *Petitioner*

v.

UNITED STATES OF AMERICA

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

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BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the Court of Appeals (R. 60-61) is reported at 199 F. 2d 450.

JURISDICTION

The judgment of the Court of Appeals was entered on October 27, 1952 (R. 62). The peti-

tion for a writ of certiorari was filed on December 9, 1952. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the evidence supported the District Court's finding that a finance company seeking remission of forfeiture knew that the husband of the nominal purchaser of a truck was the true owner.

STATUTE INVOLVED

18 U.S.C. 3617 provides in pertinent part as follows:

> *Remission or mitigation of forfeitures under liquor laws; possession pending trial—(a) Jurisdiction of court.*
>
> Whenever, in any proceeding in court for the forfeiture, under the internal-revenue laws, of any vehicle or aircraft seized for a violation of the internal-revenue laws relating to liquors, such forfeiture is decreed, the court shall have exclusive jurisdiction to remit or mitigate the forfeiture.
>
> *(b) Conditions precedent to remission or mitigation.*
>
> In any such proceeding the court shall not allow the claim of any claimant for remission or mitigation unless and until he proves (1) that he has an interest in such vehicle or air-

craft, as owner or otherwise, which he acquired in good faith, (2) that he had at no time any knowledge or reason to believe that it was being or would be used in the violation of laws of the United States or of any State relating to liquor, and (3) if it appears that the interest asserted by the claimant arises out of or is in any way subject to any contract or agreement under which any person having a record or reputation for violating laws of the United States or of any State relating to liquor has a right with respect to such vehicle or aircraft, that, before such claimant acquired his interest, or such other person acquired his right under such contract or agreement, whichever occurred later, the claimant, his officer or agent, was informed in answer to his inquiry, at the headquarters of the sheriff, chief of police, principal Federal internal-revenue officer engaged in the enforcement of the liquor laws, or other principal local or Federal law-enforcement officer of the locality in which such other person acquired his right under such contract or agreement, of the locality in which such other person then resided, and of each locality in which the claimant has made any other inquiry as to the character or financial standing of such other person, that such other person had no such record or reputation.

STATEMENT

On July 6, 1951, the Government filed a libel of seizure and forfeiture against one 1951 Ford pick-up ¾-ton truck, alleging that it had been used in the removal, deposit, and concealment of untaxed distilled spirits, and in connection with the operation of an illicit distillery (R. 2-4). The present petitioner, the Hammonton Investment and Mortgage Company, petitioned for a remission of the forfeiture, alleging that it was the owner of the forfeited truck as the assignee of a conditional sales contract; that it had conducted an investigation of the character and moral responsibility of the purchaser for whom it was financing the truck and found it to be good; and that the seizure was incurred without wilful negligence or intent to defraud the revenue on the part of the petitioner (R. 6-10). After a trial without a jury, the court denied the petition (R. 56-57), and rendered Findings of Fact and Conclusions of Law in accordance therewith (R. 52-56). On appeal to the Court of Appeals for the Third Circuit, the order of the District Court was affirmed (R. 62).

There is no question here involved as to the legality of the seizure and forfeiture of the truck. The sole question presented concerns the remission of the forfeiture by the court. The evidence bearing on the denial of remission may be summarized as follows:

About a week prior to April 1951, Thomas J. Marks told a salesman of the Hy-Way Motor Service that he wanted a ¾-ton pick-up truck as soon as possible. When the truck arrived about a week later, Marks told the salesman that he wanted to finance it, and gave the salesman the necessary information. (R. 20-22.)

The salesman had the required forms, but Marks indicated that it was his wife, Thelma Marks, who would sign them. They then went over to Marks' house where Thelma Marks signed the papers (R. 22-23), including a conditional sale contract (Ex. P-1, R. 45-46). Marks himself paid the down payment of one-third of the purchase price (R. 23), and the sales contract provided that the deferred balance would be paid in twenty-four monthly installments (Ex. P-1). The conditional sale contract was assigned that same day to the petitioner for financing (R. 46).

On April 5, 1951, the same day that Thelma Marks executed the papers (Ex. P-2, R. 47-48), one Rosetti, an investigator for the petitioner, went out to Marks' farm where he talked with Thelma Marks, in her husband's absence (R. 29). He also talked with a credit reference given by the Marks, and with persons in the vicinity of the Marks' house (R. 30-36). He did not, however, make any inquiry of the chief of police (R. 32), or the Federal Alcoholic Tax Unit, or the sheriff of Atlantic County, or his office (R. 33). Rosetti

testified that he did not as a rule check with the authorities unless something caused him to suspect a particular applicant (R. 33); and he indicated in his report to his company that his reliance in this instance had been on what neighbors had told him (Ex. P-4, R. 51). He could not remember whether he inquired about both the Marks, or just Thelma Marks (R. 30-31). He executed an investigation report dated April 5, 1951 (Ex. P-3, R. 49) in which he indicated, *inter alia,* that Thelma Marks was a housewife with six dependents and that her only source of income was from her husband. The form indicates under a space marked "Full business address," the notation "hauling." He also executed a commodity report the next day (Ex. P-4, R. 51) in which he indicated that Thelma Marks was a housewife, that she and her husband were in the hauling business, and that her husband owned or was buying the property where they resided. This report states: "Also determined they have lived in this vicinity for a number of years and have never been in any serious trouble."

The Government introduced into evidence the record of the United States Department of Justice relating to Thomas Marks (Ex. G-1, R. 38-39, 54), which indicated that he had a long record of violations of the federal liquor laws, that he had been convicted and sentenced on several occasions between 1939 and 1945 for federal liquor law viola-

tions, that he had violated his probation on other occasions by similar violations, and that at the time of the sale of the truck he was on probation for violation of the federal liquor laws.

The District Court in its findings of fact noted that Mrs. Marks had no outside employment or income, and that such facts were known by the Hy-Way Motor Service and petitioner at the time of the sale of the vehicle and at the time the lien arose (R. 53-54). It concluded (R. 56):

> 3. Since Thomas J. Marks had such a record for violating the Federal laws relating to liquor at the time of the sale of the vehicle at the time the lienor acquired its lien and the wife in whom paper title was placed had no income except that from her husband, Thomas J. Marks, and since no inquiry was made concerning such record of any of the law enforcement officials as required by statute in such cases, the petition must be denied.

ARGUMENT

Petitioner's argument that the available facts "at no time indicated to petitioner circumstances which would lead it, as a 'reasonably prudent law-abiding person' to make further investigation of the husband" (Pet. 7) is merely an attempt to re-argue the factual issues resolved by the trial judge. The trial judge found that petitioner did have reason to know that the husband was "the true

purchaser and owner of the vehicle" (R. 55), and, as the court below stated, such finding was based on "ample evidence" (R. 60). The cases cited by petitioner as being in conflict with the decision below (*United States* v. *One Ford Coach,* 307 U.S. 219; *United States* v. *One 1938 Model Chevrolet Coach,* 106 F. 2d 985 (C.A. 5)) present no conflict because the courts there found that in the circumstances the claimants in those cases were not put on notice of the existence of an undisclosed principal.

On the basis of the factual finding that petitioner actually knew that the husband was the true purchaser, it is clear that remission was properly denied, since no inquiry was made at the headquarters of the sheriff, the chief of police, or the federal law enforcement agencies enumerated in 18 U.S.C. 3617(b)(3), *supra,* p. 3. *Aetna Finance Company* v. *United States,* 191 F. 2d 63 (C.A. 10); *Kinston Auto Finance Company* v. *United States,* 182 F. 2d 543 (C.A. 4); *United States* v. *One 1939 Model De Soto Coupe,* 119 F. 2d 516 (C.A. 10). The inquiries made of the neighbors certainly were not sufficient compliance with the statutory conditions for remission. Inquiry must be made both as to one's "record" and "reputation," and "reputation" as used in the statute means the reputation among law-enforcement officers rather than a general reputation among the people in the com-

munity. *Manufacturers Acceptance Corp.* v. *United States,* 193 F. 2d 622, 624 (C.A. 6).[1]

CONCLUSION

The decision below is correct and no conflict of decision is involved. It is respectfully submitted that the petition for a writ of certiorari should be denied.

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JANUARY 1953.

[1] The suggestion that inquiry would have been unavailing since "it appears that whatever Thomas J. Marks' record or reputation was, it was not known to the local police chief" (Pet. 10) is patently frivolous, for inquiry of the federal officers designated in the statute would have revealed the record.

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